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05 UNITED STATES DISTRICT COURT
06 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

07 JASMINE K.,)
08 Plaintiff,) CASE NO. C20-0728-MAT
09 v.)
10 ANDREW M. SAUL,) ORDER RE: SOCIAL SECURITY
Commissioner of Social Security,) DISABILITY APPEAL
11 Defendant.)
12 _____)

13 Plaintiff proceeds through counsel in his appeal of a final decision of the
14 Commissioner of the Social Security Administration (Commissioner). The Commissioner
15 denied Plaintiff's application for Supplemental Security Income (SSI) after a hearing before
16 an Administrative Law Judge (ALJ). Having considered the ALJ's decision, the
17 administrative record (AR), and all memoranda of record, this matter is REVERSED and
18 REMANDED for further administrative proceedings.

19 **FACTS AND PROCEDURAL HISTORY**

20 Plaintiff was born on XXXX, 1997.¹ She has a high school diploma and no significant
21 work experience. (AR 172.)

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¹ Dates of birth must be redacted to the year. Fed. R. Civ. P. 5.2(a)(2) and LCR 5.2(a)(1).

01 Plaintiff applied for SSI in March 2017. (AR 201-07.) That application was denied
02 and Plaintiff timely requested a hearing. (AR 108-16, 120-29.)

03 On February 25, 2019, ALJ Raymond Souza held a hearing, taking testimony from
04 Plaintiff and a vocational expert (VE). (AR 54-74.) On April 3, 2019, the ALJ issued a
05 decision finding Plaintiff not disabled. (AR 37-47.) Plaintiff timely appealed. The Appeals
06 Council denied Plaintiff's request for review on March 24, 2020 (AR 1-6), making the ALJ's
07 decision the final decision of the Commissioner. Plaintiff appealed this final decision of the
08 Commissioner to this Court.

09 **JURISDICTION**

10 The Court has jurisdiction to review the ALJ's decision pursuant to 42 U.S.C. §
11 405(g).

12 **DISCUSSION**

13 The Commissioner follows a five-step sequential evaluation process for determining
14 whether a claimant is disabled. *See* 20 C.F.R. §§ 404.1520, 416.920 (2000). At step one, it
15 must be determined whether the claimant is gainfully employed. The ALJ found Plaintiff had
16 not engaged in substantial gainful activity since the application date. (AR 39.) At step two, it
17 must be determined whether a claimant suffers from a severe impairment. The ALJ found
18 severe Plaintiff's Ehler's Danlos Syndrome, fibromyalgia, sleep disorder, Graves' disease,
19 Hashimoto's thyroid, anxiety, and depression. (AR 39.) Step three asks whether a claimant's
20 impairments meet or equal a listed impairment. The ALJ found that Plaintiff's impairments
21 did not meet or equal the criteria of a listed impairment. (AR 39-41.)

22 If a claimant's impairments do not meet or equal a listing, the Commissioner must

01 assess residual functional capacity (RFC) and determine at step four whether the claimant has
02 demonstrated an inability to perform past relevant work. The ALJ found Plaintiff capable of
03 performing sedentary work with additional limitations: she can never climb ladders, ropes, or
04 scaffolds. She can occasionally stoop, crouch, kneel, crawl, and climb ramps or stairs. She
05 cannot be exposed to hazardous machinery, unprotected heights, or respiratory irritants such
06 as fumes, odors, dusts, and gases. She can remember, understand, and carry out simple and
07 routine instructions and tasks consistent with jobs at the specific vocational preparation level
08 1 or 2. She cannot work with strict production quotas, but can work with an emphasis on a
09 per-shift, rather than per-hour, basis. (AR 41.)

10 Because Plaintiff has no past relevant work (AR 46), the ALJ moved on to step five,
11 where the burden shifts to the Commissioner to demonstrate that the claimant retains the
12 capacity to make an adjustment to work that exists in significant levels in the national
13 economy. With the assistance of the VE, the ALJ found Plaintiff capable of transitioning to
14 other representative occupations, such as final assembler. (AR 46-47.)

15 This Court's review of the ALJ's decision is limited to whether the decision is in
16 accordance with the law and the findings supported by substantial evidence in the record as a
17 whole. *See Penny v. Sullivan*, 2 F.3d 953, 956 (9th Cir. 1993). Substantial evidence means
18 more than a scintilla, but less than a preponderance; it means such relevant evidence as a
19 reasonable mind might accept as adequate to support a conclusion. *Magallanes v. Bowen*, 881
20 F.2d 747, 750 (9th Cir. 1989). If there is more than one rational interpretation, one of which
21 supports the ALJ's decision, the Court must uphold that decision. *Thomas v. Barnhart*, 278
22 F.3d 947, 954 (9th Cir. 2002).

01 Plaintiff argues the ALJ erred in (1) discounting her subjective symptom testimony,
02 (2) assessing certain medical opinions, and (3) failing to show that she can perform work that
03 exists in significant numbers. The Commissioner argues that the ALJ's decision is supported
04 by substantial evidence and should be affirmed.

05 Subjective symptom testimony

06 The ALJ discounted Plaintiff's allegations because (1) Plaintiff had minimal treatment
07 for her Ehler's Danlos syndrome and fibromyalgia, experienced improvement of her thyroid
08 conditions, and had many normal physical examinations; and (2) the record contains many
09 unremarkable mental status examinations and Plaintiff did not take any medication to manage
10 her mental symptoms. (AR 42-44.) Plaintiff argues that these reasons are not clear and
11 convincing, as required in the Ninth Circuit. *Burrell v. Colvin*, 775 F.3d 1133, 1136-37 (9th
12 Cir. 2014).

13 Plaintiff contends that the ALJ failed to provide any specific reasons to discount her
14 allegations, but instead merely summarized the record. Dkt. 16 at 16-17. The Court
15 disagrees. As described above, the ALJ relied on the evidence of Plaintiff's minimal
16 treatment for some conditions and improvement with other conditions, as well as Plaintiff's
17 multiple normal physical examinations, in order to discount Plaintiff's allegations of disabling
18 limitations caused by her physical conditions:

19 In reviewing the claimant's medical record, the undersigned notes that there is
20 minimal treatment for Ehler's Danlos Syndrome or fibromyalgia and only one
21 documented instance of tender points on exam in May 2017, with otherwise
22 normal physical exams. [(AR 429.)] It appears that her thyroid condition
became more controlled and stab[le] in 2018. [(AR 701.)] Nevertheless, in
deference to her ongoing pain and fatigue, the undersigned limits the claimant
to performing sedentary work with postural and environmental limitations to

01 accommodate her symptoms, including nausea, headaches, and joint pain.
02 (AR 43-44.) These are clear and convincing reasons to discount Plaintiff's description of
03 disabling physical limitations. *See Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001)
04 ("While subjective pain testimony cannot be rejected on the sole ground that it is not fully
05 corroborated by objective medical evidence, the medical evidence is still a relevant factor in
06 determining the severity of the claimant's pain and its disabling effects."); *Meanel v. Apfel*,
07 172 F.3d 1111, 1114 (9th Cir. 1999) (rejecting subjective pain complaints where petitioner's
08 "claim that she experienced pain approaching the highest level imaginable was inconsistent
09 with the 'minimal, conservative treatment' that she received").

10 The ALJ also explained that he found that Plaintiff's mental limitations were not
11 disabling in light of evidence that her symptoms improved with therapy and were not treated
12 with medication, and because she "regularly had unremarkable mental status exams." (AR
13 44.) These are, again, clear and convincing reasons to discount Plaintiff's allegations of
14 mental limitations. *See Tommasetti v. Astrue*, 533 F.3d 1035, 1039-40 (9th Cir. 2008) ("The
15 record reflects that Tommasetti responded favorably to conservative treatment including
16 physical therapy and the use of anti-inflammatory medication, a transcutaneous electrical
17 nerve stimulation unit, and a lumbosacral corset. Such a response to conservative treatment
18 undermines Tommasetti's reports regarding the disabling nature of his pain."); *Meanel*, 172
19 F.3d at 1114.

20 Because the ALJ provided multiple valid reasons to discount Plaintiff's allegations of
21 disabling physical and mental limitations, the Court affirms this portion of the ALJ's decision.

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01 Medical evidence

02 Plaintiff contends that the ALJ erred in assessing opinions written by treating
03 physician Remi Gavello, M.D., and examining psychiatrist Rejoice Opara, M.D. The Court
04 will consider each disputed opinion in turn.

05 Legal standards

06 In general, more weight should be given to the opinion of a treating doctor than to a
07 non-treating doctor, and more weight to the opinion of an examining doctor than to a non-
08 examining doctor. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1996).² Where not
09 contradicted by another doctor, a treating or examining doctor's opinion may be rejected only
10 for "clear and convincing" reasons. *Id.* (quoting *Baxter v. Sullivan*, 923 F.2d 1391, 1396
11 (9th Cir. 1991)). Where contradicted, a treating or examining doctor's opinion may not be
12 rejected without "specific and legitimate reasons" supported by substantial evidence in the
13 record for so doing." *Lester*, 81 F.3d at 830-31 (quoting *Murray v. Heckler*, 722 F.2d 499,
14 502 (9th Cir. 1983)).

15 Dr. Gavello

16 Dr. Gavello began treating Plaintiff in 2013 and completed a checkbox opinion in
17 September 2017, describing Plaintiff's limitations. (AR 546-48.) The ALJ summarized Dr.
18 Gavello's opinion and explained that he gave "some weight" to it, crediting Dr. Gavello's
19 indicating that Plaintiff was limited to sedentary work and that Plaintiff's pain caused some
20 concentration limitations. (AR 44-45.) The ALJ indicated that he discounted other parts of

22 ² Because Plaintiff filed disability applications prior to March 27, 2017, the regulations set forth in 20 C.F.R. § 416.927 apply to the ALJ's consideration of medical opinions.

01 Dr. Gavello's opinion in light of psychological testing showing that Plaintiff could maintain
02 sufficient concentration and pace to meet the demands of unskilled work, and because Dr.
03 Gavello's opinion "tends to rely more on the claimant's subjective complaints and is
04 speculative regarding absences." (AR 45.)

05 Plaintiff argues that the ALJ erred in finding that Dr. Gavello's opinion was based on
06 subjective reports without acknowledging Dr. Gavello's own explanation of the basis of her
07 opinion. (*See* AR 548 (Dr. Gavello writes her opinion is based on "clinical observation,
08 testing, consults from rheumatologist").) The Court agrees. Given that Dr. Gavello had been
09 treating Plaintiff for a number of years and cited objective foundation for her opinion, the
10 ALJ's finding that Dr. Gavello's opinion "tends to rely more on" Plaintiff's subjective
11 complaints is not legitimate. Furthermore, the ALJ did not identify any part of Dr. Gavello's
12 opinion that was based on subjective complaints, and thus this reasoning is not sufficiently
13 specific.

14 Plaintiff also contends that the ALJ erred in finding a contradiction between Dr.
15 Gavello's opinion that the deficits in Plaintiff's concentration, persistence and pace would be
16 marked to severe and Dr. Opara's psychological testing because Dr. Opara's conclusions in
17 fact corroborate rather than contradict Dr. Gavello's opinion. Dkt. 16 at 11-12. Indeed, Dr.
18 Opara opined that Plaintiff was "limited" in her ability to perform work duties at a sufficient
19 pace, maintain attendance, or complete a normal workday without interruptions. (AR 556.)
20 The ALJ thus inaccurately summarized Dr. Opara's opinion as indicating that Plaintiff "could
21 maintain sufficient concentration and pace to perform unskilled work." (AR 45.) Thus, this
22 line of the ALJ's reasoning is not legitimate.

01 To the extent that the ALJ discounted Dr. Gavello's opinion regarding absences as
 02 "speculative," the Court agrees with Plaintiff that any estimation of absences requires some
 03 degree of speculation, but the record does contain evidence of Plaintiff's absenteeism (see AR
 04 333-43) while she was attending school and Dr. Gavello herself wrote a note to excuse
 05 Plaintiff's school absences. (AR 581.) Although the Commissioner asserts that these
 06 absences may not have been medically necessary (Dkt. 18 at 10), nothing in Dr. Gavello's
 07 treatment notes suggests as much. Because the ALJ's rejection of Dr. Gavello's absenteeism
 08 opinion appears to be based on sheer disbelief rather than a legitimate rationale for
 09 discounting, the Court finds this line of reasoning to be erroneous. *See Benecke v. Barnhart*,
 10 379 F.3d 587, 594 (9th Cir. 2004) ("Sheer disbelief is no substitute for substantial evidence.").

11 On remand³, the ALJ shall reconsider Dr. Gavello's opinion and either credit it or
 12 provide legally sufficient reasons to discount it.

13 Dr. Opara

14 In August 2017 Dr. Opara examined Plaintiff and wrote a narrative report describing
 15 her symptoms and limitations. (AR 551-56.) As described above, Dr. Opara opined that
 16 Plaintiff was "limited" in her ability to perform work duties at a sufficient pace, maintain
 17 attendance, or complete a normal workday without interruptions. (AR 556.) The ALJ
 18 indicated that he found Dr. Opara's opinion to be consistent with the treatment records and
 19 therefore gave it "great weight." (AR 45.)

20 Plaintiff argues that the ALJ erred in purportedly crediting Dr. Opara's opinion but

21 ³ Although Plaintiff requests a remand for a finding of disability, she has not shown that this
 22 extraordinary remedy is appropriate here. Accordingly, the Court remands this matter for further
 proceedings.

01 failing to explain how he accounted for the limitations (listed above) that Dr. Opara indicated.
02 The Commissioner responds that the ALJ reasonably discounted the vague and inconsistent
03 portions of Dr. Opara's opinion (Dkt. 18 at 10-11), but this argument is not grounded in the
04 ALJ's decision. It may well be that Dr. Opara's opinion could be reasonably characterized as
05 vague and internally inconsistent, and could be discounted on that basis, but the ALJ did not
06 find that Dr. Opara's opinion was vague or inconsistent, or provide any reason to discount any
07 portion of Dr. Opara's opinion. (*See* AR 45.) Because the Court is constrained to review the
08 ALJ's decision as written, *Brown-Hunter v. Colvin*, 806 F.3d 487, 492 (9th Cir. 2015), and
09 the ALJ provided no reason to discount any portion of Dr. Opara's opinion, the Court finds
10 that the ALJ erred in purporting to credit Dr. Opara's opinion without accounting for all of the
11 limitations she indicated in the RFC assessment. *See* Social Security Ruling 96-8p, 1996 WL
12 374184, at *7 (Jul. 2, 1996) ("If the RFC assessment conflicts with an opinion from a medical
13 source, the adjudicator must explain why the opinion was not adopted.").

14 On remand, the ALJ should reconsider Dr. Opara's opinion and either credit it or
15 provide legally sufficient reasons to discount it.

16 Because the ALJ must reconsider the opinions of Drs. Gavello and Opara on remand,
17 and as a result may reformulate Plaintiff's RFC assessment and enter new step-five findings,
18 the Court need not address Plaintiff's argument regarding the sufficiency of the step-five
19 findings in the current decision at this time.

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CONCLUSION

For the reasons set forth above, this matter is REVERSED and REMANDED for further administrative proceedings.

DATED this 15th day of March, 2021.



Mary Alice Theiler
United States Magistrate Judge